JD–36-98
Boston, MA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

LUCENT TECHNOLOGIES, INC.

and Case No. 1–CA–35242

LOCAL 2320, INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, AFL-CIO

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DECISION

Statement of the Case

WALLACE H. NATIONS, Administrative Law Judge. This case was tried in Boston, Massachusetts on January 28, 1998. The charge was filed by Local 2320, International Brotherhood of Electrical Workers, AFL-CIO (hereinafter Union) on May 22, 1997 and the complaint was issued on July 30, 1997.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following

Findings of Fact

I. Jurisdiction

The Respondent, Lucent Technologies, Inc. (hereinafter Respondent or Lucent), is a corporation engaged in producing telecommunication equipment.[1] It maintains its headquarters in Morristown, New Jersey and as pertinent, maintains facilities in the State of New Hampshire. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

[1] It was stipulated by the parties that since about October 1, 1996, Lucent has been a successor to AT&T as to the portion of AT&T in which system technicians in New Hampshire and New England are employed.

I. Alleged Unfair Labor Practices

A. Background and Issues for Determination

The Complaint alleges failure and refusal of the Respondent to provide the Union with necessary and relevant information in violation of Section 8(a)(1) and (5) of the Act. The information was requested during the investigation and pendency of a grievance filed by the Union on behalf of Kenneth Gosselin. Gosselin, a systems technician, had been laid off in April 1991, and had recall rights for three years. In 1994, when Gosselin's recall rights expired, the Union filed a grievance alleging that Respondent failed to recall Gosselin as required by the collective bargaining agreement.

To further investigate the merits of the grievance, and based on anecdotal evidence from its members, as well as a statement by one of Respondent's managers, the Union requested information from Respondent regarding the amount of system technician work Respondent contracted out during those three years, the amount of overtime worked by other New Hampshire systems technicians during the same time period, and the number of hours worked by systems technicians who were temporarily transferred into New Hampshire from other New England areas. This request, which the record shows was first made verbally in 1994, was reduced to a written request in December 1995. The record further shows that despite repeated requests through 1996 and into 1997, including the March 7, 1997 request on which the Complaint is based, Respondent failed to provide any of the requested information.

By letter dated July 18, 1997, after the May 1997 charge was filed, Respondent finally provided the Union with a few bits of inaccurate and incomplete information regarding two and a half of the five requests for information. The record shows that this limited amount of information was actually compiled nearly a year earlier, and was not provided to the Union until the charge was filed and the decision to issue Complaint was made.

B. The Reasons for the Information Request and Respondent's Response

The bargaining unit represented by the Union is entirely composed of systems technicians in New Hampshire. Kenneth Gosselin was one of those New Hampshire systems technicians until his layoff on April 29, 1991. Immediately prior to Gosselin's layoff, there were about 30 systems technicians in the unit. The Union's assistant business manager, Kitrick Bradbury, described the systems technician job as similar to what was called an installation repairman in the old telephone company. The systems technicians install, maintain and repair telephone systems, including PBX systems and switches. In order to accomplish these tasks, they go to customers' residences or businesses and perform the work.

Respondent has two groups or divisions of systems technicians, based on the size of the residential or commercial entity with which Respondent is doing business. The small business group is referred to by Respondent as the SBD. The large business group is referred to as the NSSD and is the one in which Gosselin worked. Michael Higgins, the steward for Local 2320, testified that systems technicians moved between the two groups as needed to adjust for changes in numbers of employees.

In the event of a layoff, Respondent pools the two groups and lays off within the reasonable commuting area, otherwise known as the RCA. The RCA applicable to Gosselin and to all Local 2320 Unit members is the State of New Hampshire. In addition to the RCAs, there are larger areas known as the force adjustment areas, or FAAs. Gosselin's FAA is New

England, which includes the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island and Connecticut. These terms are defined in the various collective-bargaining agreements which have been in effect since Gosselin's layoff. The recall article of the collective-bargaining agreement which was in effect during the majority of the time that Gosselin had recall rights is found at Article G20.09 of that agreement.[2]

The recall provision obligates Respondent to first offer recall to those on lay off within the RCA where the job opening occurs. If there are no laid off employees, or there are simply none who are interested in the offer, the Respondent must then extend the offer to those on layoff within the broader area, the FAA. Nothing in the recall provision of the collective-bargaining agreement requires the employee on layoff to accept a position outside his or her RCA. In fact, the recall provision focuses exclusively on one's right to be recalled to the RCA from which one was laid off.[3]

After Gosselin's recall rights had expired, and he was not recalled to a regular position in his RCA, the Union filed a grievance on his behalf. The grievance alleges that Respondent filled a vacancy in an untimely manner and not consistent with the agreement so that the recall rights of Gosselin expired. It cites Article 20 as the specific article violated. The grievance was reduced to writing on July 25, 1994, but prior to that time it had been pursued informally as required by the preliminary steps of the grievance procedure. Prior to the grievance becoming a formal written document, Union representatives Higgins and Bradbury met with the second line supervisor, Linda Ollen.

The meeting with Ollen was held on July 22, 1994 and was attended by Ollen, Bradbury and Higgins. At the meeting, the Union representatives explained why they thought Gosselin had not been recalled. Ollen testified that they informed her that one of those reasons was that the Union had heard that Gosselin's supervisor, John Coonan, told another unit employee that Gosselin would never work in New Hampshire again. In fact, Ollen testified that that comment was the basis for their discussion that day.

In support of its reasons for pursuing the grievance, the Union representatives noted that excessive amounts of work were being performed as overtime and by technicians from outside the RCA who were being temporarily transferred into New Hampshire. Unit members, including Higgins, had observed rampant subcontracting and frequent use of technicians from outside the RCA, and had themselves experienced excessive overtime. From 1991 through 1994, Higgins, who is also a systems technician, received $15,000 to $20,000 in overtime earnings. Bradbury requested information from Ollen regarding these observations and regarding subcontracting of systems technicians' work, and he left the meeting expecting to receive it. Higgins, too, had the impression that the Union would receive the information, because as he walked out of the meeting, he said to Bradbury that he thought Respondent would be surprised when it saw the numbers, referring specifically to the number of contractor and temporary transfer hours worked in New Hampshire.

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[2] The collective-bargaining agreements varied only slightly from 1991, the year Gosselin was laid off, to the current agreement. Some article numbers changed slightly, but the important aspects of each agreement as they pertain to the instant case, remained the same. For the sake of consistency, the 1992-1995 agreement found at Joint Exhibit 1(b), and the corresponding ATS memorandum found at Joint Exhibit 2(b), will be cited.

[3] Thus, the May 14, 1993 letter offering Gosselin a job in Connecticut, is irrelevant. It is further irrelevant on the basis that the record does not disclose what Gosselin's response was to the letter, or what communications he had with Respodent pursuant to this letter.

Ollen, who was the operations manager in the NSSD from April 1993 through June 1997, acknowledged that the information request was first made at the July 1994 meeting. She further admitted that she agreed at the conclusion of the meeting to look into the issues that the Union had raised regarding overtime and subcontracting, and that the issue of temporary transfers had been discussed, but she did not think she needed to provide any data regarding that.

Ollen testified that she spoke to Bradbury by telephone on some unspecified later date and told him that the overtime information was not available, and that she was "working the issue between the small and large channel trying to see if we could get the forces to work more closely together, but that was going to take time." It is not clear how the latter part of her response addressed the request Bradbury made. In addition, Ollen asserted that she told Bradbury that overtime information was not available for "specific" jobs in New Hampshire, yet she later stated that the information was available on individual paper records, and she meant that it was not available in a report form. Ollen also asserted that subcontracting was only happening in the SBD,[4] a group for which she was not responsible, and she told Bradbury that Respondent was already providing reports on subcontracting to the International Union.[5] Bradbury testified, however, that he had tried to get the report from the International Union, but could not because the International was not receiving it.

At a subsequent meeting on the grievance, Bradbury met with a labor relations representative, Bob Cabral, on September 30, 1994. At this meeting, Cabral told Bradbury that the Respondent looked at 30 hours a week for a month or more as being the amount of work that must exist as overtime, subcontracting or temporary transfers to justify recalling a technician.

The grievance was denied again at the final step prior to arbitration on October 4, 1994. The Union requested arbitration of the grievance on December 2, 1994.[6] By letter dated December 21, 1995, Bradbury reduced to writing the information the Union had earlier requested. This letter reads in pertinent part:

1. From April 1, 1991 through March 31, 1994, the number of Contract work hours worked in the State of New Hampshire, by month, that involved the types of traditional telephone work which have regularly been performed by bargaining unit Systems Technicians in New Hampshire.

2. With respect to the data furnished in response to the request in 1 above, indicate the monthly number of Contract work hours worked by Work Group, i.e., the Work Group which

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[4] This statement is contrary to the chart she later prepared which puportedly shows subcontracting in NSSD only two months after Gosselin's layoff.

[5] The reports to which Ollen was referring were allegedly sent to the International Union President, Joe Penna, in New Jersey, by a labor relations representative of the Respondent who is located in Atlanta, Georgia. There is not evidence in the record that these reports were actually sent or received.

[6] The parties' arbitration and mediation procedure, found at Article G8, requires the party requesting arbitration to notify the other party within 90 days of the step 3 answer, which is deemed the end of the grievance procedure for purposes of calculaing the 90 days. The arbitration procedure also requires the hearing to be held with 180 days of the selection of an arbitrator--this was not accomplished.

would have otherwise performed the work defined above.

3. With respect to the data furnished in response to the request in 1 above, identify, by Work Group (as defined above), each project that involved types of traditional telephone work regularly performed by bargaining unit Systems Technicians in New Hampshire and, with respect to each such project, its beginning and completion dates.

4. From April 1, 1995[7] through March 31, 1994, furnish the number of overtime hours worked, by month, in each Work Group, by bargaining unit Systems Technicians in New Hampshire.

5. From April 1, 1991 through March 31, 1994, furnish the number of transfers, by month, into New Hampshire from other Reasonable Commuting Areas.

Bradbury had not received any of the information he had requested back in 1994 when he made the written request at the end of 1995, and nobody had told him that the information did not exist,[8] was too burdensome, or would require negotiation over the cost of gathering it.

Bradbury sent the request for information, which his attorney drafted. Ollen sent the request to Respondent's attorneys at the advice of the Respondent's labor relations people. By letter dated January 22, 1996, a month after the request for information was made, Ollen sent Bradbury a letter informing him that James Cutlip, an attorney for AT&T, the Employer at the time, was now handling it. The letter did not state that the information was not available, was too burdensome to provide, was irrelevant or too costly to prepare.

By letter dated February 21, 1996, the Union's attorney reminded Cutlip of the information request, enclosed another copy of it, and requested that the information be provided by March 4, 1996. It concludes with an offer to discuss any question Cutlip has that might prevent him from supplying the information by that date. No response was received.

The next contact occurred during the successorship transaction. By letter dated September 9, 1996, from the Union's attorney to Lucent Technologies, Inc.'s attorney, the Union again asked for the information to be provided, this time, prior to the September 30, 1996 arbitration date. Three months later, by letter dated December 5, 1996, the Union's attorney acknowledged that the arbitration case had been postponed at Respondent's request, and that he still had not received a new panel list from Respondent from which to select an arbitrator. In addition, the letter notes that Respondent's attorney told the Union's attorney in September that he was forwarding Respondent's responses to the information request shortly, and they still had not been received. Interestingly, Ollen testified that she prepared the one and only data chart which was ever provided to the Union on September 3, 1996, and she had given it to Respondent's attorney at that time.

By letter dated March 7, 1997, the Union's attorney sent a last letter to Respondent's attorney. Again, the Union's attorney noted Respondent's failure to respond to either the

[7] This 1995 date was a typographical error and was meant to be 1991.

[8] It should be noted that Ollen's version of what she told Bradbury was that the overtime information was not available for specific jobs; this is not akin to saying that the information does not exist. Later, on cross-examination, Ollen stated that what she told Bradbury was "that it was not readily available in a report form." Thus, the information existed, it simply did not exist in a convenient format, and Ollen did not offer the paper versions of the information.

information request or to the selection of another panel of arbitrators. In conclusion, the Union's attorney stated that if the information is not received by March 19, "the Union will seek enforcement of its rights in accordance with the applicable law." No information was received and the instant charge was filed in May, 1997.

After the charge was filed, and within about a week of the Complaint issuing in this matter, Respondent provided a partial response dated July 18, 1997. This partial response includes the chart prepared by Ollen back in 1996, nearly a year before, and a few memoranda seeking permanent transfers of systems technicians to New Hampshire, all of which are dated after Gosselin's recall rights expired. There is no response at all to request number 4, which asked for the overtime hours worked by month in each work group (NSSD or SBD) by systems technicians. Bradbury noted that he had made a typographical error on the date in request 4, but he also testified without contradiction that nobody asked for clarification of his request, and that all of the other requests for information ask for the same time frame, the three years during which Gosselin possessed recall rights.

Ollen testified that she did not prepare any information regarding the overtime request because she was told to forward the request for information to Respondent's attorneys. She also testified, as noted above, that the information was available, but not in a convenient report form. Ollen noted that the technicians had to turn in timesheets or call in the information to a clerk on a weekly basis. The information they provided included "actual hours worked against a particular product and what that product was, what service orders and/or repair tickets they worked, any travel time they took, as well as any other expenses they incurred throughout the business day." While Ollen did not think that the underlying information was kept for long, she did not know and had not researched it. Such data would be useful in tracking temporary transfers, as well as overtime.

For all practical purposes, there is also no response to request number 5, which asked for the number of transfers, by month, into New Hampshire from other RCAs. The memoranda provided regarding permanent transfers do not address this request, as the phrase, from other reasonable commuting areas" denotes temporary transfers from other nearby places, such as Massachusetts. In addition, since 1994, the Union had made it clear that it sought information regarding temporary transfers. Further, Ollen testified that she discussed temporary transfers with Bradbury at the meeting on July 22, 1994. The record does not disclose anyone ever mentioning permanent transfers in connection with this information request.

Ollen also did not compile any information on temporary transfers, not because she did not understand the request, but because the labor relations people told her to refer it to the attorneys. She recalled that there had been discussions with the attorneys and with the labor relations people in early 1996 regarding temporary transfers and whether or not the information could be compiled. The July 18, 1997 response, however, does not mention temporary transfers nor the availability of the information, it simply ignores the request.

While Ollen claimed that she did not give the reports to Bradbury regarding subcontracting because a labor relations representative in Atlanta gave them to the International Union, she testified that she gathered data on this request, apparently over a nine month period. This data was meant to respond to requests 1 and 2, it appears. Ollen testified that she received the underlying reports on which she based her chart on a quarterly basis, and that the reports showed a breakdown by RCA and by NSSD and SBD of how many subcontracting hours were worked by month, per quarter. While she did not give these reports to Bradbury, she used them, as well as worksheets prepared at her level, to prepare her chart. The work sheets she described included the name of the subcontractor. She contacted the

SBD operations managers who would have been responsible for the worksheets for the SBD during 1991 through 1994, but was told that no information existed at that level. In addition, the reports she received quarterly did not show accurate information for the SBD in New Hampshire, which caused her to put "N/A" [9] on her chart for two of the three years of Gosselin's recall rights. Unfortunately she did not convey to the Union the fact that the information on SBD subcontractor hours did not exist, other than by preparing her chart and forwarding it to Respondent's attorneys.

Finally, request number 3, which referenced requests 1 and 2, asks for Respondent to identify and give the starting and completion dates of each project being performed by subcontractors during the recall period. As noted above, the work sheets Ollen turned in to headquarters and which were used to create the subcontractor reports identified the subcontractors. There is no other reference to request number 3, other than Bradbury's testimony that he did not receive anything in response to the request. Respondent made no attempt to explain why it provided partial information regarding the subcontractors' hours worked by division from 1991 through 1994, and failed to respond to the request for the project dates worked by the contractors.

C. Conclusions with Respect to the Lawfulness of Respondent's Actions

It is well settled that when a union has a duty under a collective-bargaining agreement to represent employees, it is entitled to relevant and necessary information which will aid the union in performing its representative and statutory duties. *Walter N. Yoder & Sons,* 270 NLRB 652 (1984). In fact, the National Labor Relations Act obligates an employer, upon request, to furnish the union representing its employees with information which is potentially relevant and which would be useful to the union in discharging its statutory responsibilities. *NLRB v. Acme Industrial Co.,* 385 U.S. 432 (1967).

In *Acme,* the Court rejected the employer's argument that the information did not have to be provided in the absence of an arbitrator's determination that it was relevant. Respondent makes a similar argument in the instant case, to the effect that it can refuse to supply information because it believes the underlying grievance will be denied by an arbitrator, thus making the request irrelevant. That is putting the cart before the horse, to say the least.

Rather, "[t]he right of the union to the information requested must be determined by the situation which existed at the time the request was made." *Mary Thompson Hospital,* 296 NLRB 1245, 1250 (1989). The situation which existed at the time of the initial information request was the investigation of a grievance. Subsequently, the Union was told by a labor relations manager that if thirty hours of work per week existed in the form of subcontracting, overtime or temporary transfers, it would warrant recalling an employee from layoff. The initial request for information, as well as the conversation with Respondent's representative Bob Cabral, occurred prior to the step three answer by the Respondent, when the grievance was still in the grievance procedure stage. Despite the timing of the request, the arbitration had not (and has not) occurred, and the information, whether useful in the arbitration or not, could have caused the union or the Respondent to reassess their case and settle or even withdraw the grievance. Respondent's refusal to supply the information because it now deems it irrelevant thwarted the Union's efforts to show Cabral that thirty hours/week of work did exist, and warranted the recall of a New

[9] "N/A" is defined by Ollen on the chart as meaning "...that date is not available for that time period through local means. This definition was never explained to Bradbury.

Hampshire systems technician.

It is also well settled that an employer must provide presumptively relevant information. *Curtis-Wright Corp. v. NLRB,* 347 F.2d 61, 69 (3rd Cir. 1965). Where the information requested "concerns items and conditions of employment relating to employees in the bargaining units represented by the union, the information is presumptively relevant to the union's representative function." *Samaritan Medial Center,* 319 NLRB 392, 397 (1995), citing *George Koch & Sons, Inc.,* 295 NLRB 695 (1989) and *San Diego Newspaper Guild,* 548 F.2d 863 (9th Cir. 1977). The standard applied by the Board to determine relevancy is a liberal discovery-type standard. *NLRB v. Acme Industrial Co.,* supra; *W-L Molding Co.,* 272 NLRB 1239 (1984). Here, the request for overtime hours worked by New Hampshire systems technicians is presumptively relevant and no further showing of relevance is necessary. *Ohio Power,* 216 NLRB 987 (1975); *Farina Corp.,* 310 NLRB 318, 321 (1993)(where the Board adopted the ALJ's decision finding that the union "had no obligation to justify or explain the relevance of most of the information it requested since it dealt specifically and directly with bargaining unit employees.)

With regard to the other items requested in the Union's letter dated December 21, 1995, and reiterated in its 1996 and 1997 letters, I believe and find that General Counsel has established the relevancy of such information. "[T]he test for relevancy is whether the information assists in evaluating the merits of the grievance and the propriety of pursuing the grievance to arbitration." *United Technologies Corp,* 274 NLRB 504, 508 (1985). Here, the information on subcontracting and temporary transfers was requested prior to the grievance becoming a formal written grievance. The information regarding temporary transfers and subcontractors was requested on the basis of unit member's observations of such activity during the years Gosselin was eligible for recall, and it was requested because it would tend to show that enough work was available to recall Gosselin, and that perhaps availability of work was not the reason Gosselin was not recalled to work in New Hampshire. After the Union's conversation with Cabral, the relevancy of the information was even more evident. Cabral told the Union that if thirty hours a week of work existed it would warrant recalling an employee from layoff. Cabral represented the third and final step prior to arbitration. Since Respondent had not yet provided the information requested by the Union, the Union could not prove to Cabral prior to moving the grievance into the arbitration procedure that enough work existed. This failure to respond caused the Union to reduce its request to writing after the third step of the grievance procedure. By that time, the Union had more than established the relevancy of the information it sought, and Respondent had not questioned it.

> "Moreover, when requested information is presumptively relevant or has been demonstrated to be relevant, the burden shifts to the respondent to establish that the information is not relevant, does not exist, or for some other valid and acceptable reason cannot be furnished to the requesting party."

Samaritan Medical Center, supra at 398, citing *Somerville Mills,* 308 NLRB 425 (1992) and *Postal Service,* 276 NLRB 1282 (1982). Here, Respondent has not met its burden.

Respondent asserted for the first time at the hearing of this matter that it need not provide the subcontracting information because such issues are not arbitrable under Article G23, the Contract Work provision of the collective-bargaining agreement. [10] Contrary to

[10] This is not akin to *Calmat Co.,* 283 NLRB 1103 (1987), where the ALJ had to examine the underlying grievance because the information requested did not appear to pertain to the grievance. There the Board adopted the ALJ finding that the information need not be provided

Continued

Respondent's assertion, the grievance alleges a failure to recall under Article G20; it is not a subcontracting grievance intended to protest the right of the Respondent to subcontract. Further Article G23 does not prohibit information requests, nor the use of information regarding subcontracting to make other, reasonable arguments or settlement offers. In addition, "before a union is put to the effort of arbitrating even the question of arbitrability, it has a statutory right to potentially relevant information necessary to allow it to decide if the underlying grievances have merit and whether they should be pursued at all." *Safeway Stores, Inc.,* 236 NLRB 1126 at fn. 1 (1978).

Respondent's July 18, 1997 response, which failed to include any information on overtime or on temporary transfers, but did include information on subcontracting, also belies its late-raised assertion that it need not provide information on subcontracting because such issues cannot be arbitrated. If it need not provide such information, why did it do so and, more importantly, why did it fail to respond in 1996 that it was not going to provide the information because of its reliance on Article G23? In addition, if Respondent is not required to provide subcontracting information to the Union because of Article G23, then why does it allege that it provides a monthly report to the International Union on exactly such issues? Respondent cannot answer these questions because Article G23 does not prohibit information requests and because Respondent has always understood that the grievance involved here is not a subcontracting grievance.

Respondent also claims that it need not supply the information on hours worked by subcontractors because the Union could obtain the information from the International Union. "An employer's statutory obligation to furnish the union relevant information, on request, absent special circumstances, is not relieved merely because the union may have access to the information from other sources." *Postal Service,* supra at 1288, citing *New York Times Co.,* 265 NLRB 353 (1982) and *Kroger Co.,* 226 NLRB 512, 513 (1976)(where the Board held that "where a request for relevant information adequately informs the employer of the data needed, the employer must either supply such information or adequately set forth the reasons why it is unable to comply.")

With regard to the other two areas covered by the Union's requests for information, overtime work performed by unit members and temporary transfers into the New Hampshire RCA, Respondent now claims, again for the first time, that it need not provide such information because it is not relevant under the recall provisions of the collective-bargaining agreement. As already stated above, the overtime hours worked by bargaining unit members is presumptively relevant, and Respondent cannot evade its duty to provide such information. In addition, Respondent's argument relies on an interpretation of the collective-bargaining agreement as it pertains to the grievance with which the Union does not agree. Not only is it not the function of the NLRB to interpret the parties' contract, this argument requires me to determine the merits of the grievance before ruling on the relevancy of information which was requested to pursue and hopefully settle that grievance. Interpreting the collective-bargaining agreement is the duty of an arbitrator when a grievance is filed; determining relevancy under the Board's very liberal standards is my duty.

With the exception of the contracting hours for the SBD from 1991 through 1993, Respondent also fails to show that the requested information does not exist. The record

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because the grievance was not arbitrable. However, the greivance was not arbitrable becasue there was no collective-bargaining agreement in effect to compel the employer to arbitrate. Supra at 1106.

establishes that all of the remaining information is available. Respondent will not be excused from providing this information because it chose to delay responding to the Union's legitimate request, making the gathering task more cumbersome. This would only permit Respondent to profit from its wrongdoing. At no point until the hearing did Respondent claim that the information did not exist, was irrelevant or too burdensome, too costly, or too time consuming to produce.

Finally, part of the duty to supply relevant information includes the duty to do so in a timely manner. *Quality Engineered Products,* 267 NLRB 593 (1984). An inadequate or partial response submitted a year and a half after the initial written request certainly constitutes an unreasonable delay. An unreasonable delay in providing information is as much a violation of Section 8(a)(5) as a complete refusal to furnish that information. *Valley Inventory Service, Inc.,* 295 NLRB 1163, 1166 (1989), citing *Bundy Corporation*, 292 NLRB 671 (1989). See also *American Commercial Lines, Inc.,* 291 NLRB 1066 (1988)(2 1/2 month delay in furnishing information violative of Section 8(a)(5).) Here, even viewing the facts concerning the Union's information request in the light most favorable to Respondent, there was a four and a half month delay from the time of the March 7, 1997 letter until the July 18, 1997 partial response by Respondent, and a seven and a half month delay from the date of the December 5 1996 letter, which also fell within the 10(b) period of the May 15, 1997 charge. Further, any information provided at the January 28, 1998 hearing, even if it was a denial that certain information existed, was delayed an additional six months and does not "constitute an adequate substitute, either in law or fact, for direct and prompt compliance with a proper request for information by the bargaining representative." *Sonat Marine,* 279 NLRB 100, 102 (1986).

Conclusions of Law

1. Respondent, Lucent Technologies, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All Respondent's employees (excluding confidential, managerial and professional employees as defined by law) whose current job titles appear in Articles OS1, M1, A1, CS1, S1, MDC1, DT1 and DCE of the collective bargaining agreement between Lucent Technologies, Inc., and the Union ("Agreement"), as well as those whose job titles are created pursuant to new titles provision of the Agreement, and whose permanent physical reference points are in one of the geographic areas listed in Appendix to the Agreement and who are not in a bargaining unit of another union.

4. Since about 1996, and at all material times, the Union has been the exclusive collective-bargaining representative of the Unit, and since said date the Union has been recognized as such representative by Respondent.

5. Respondent has engaged in conduct in violation of Section 8(a) (1) and (5) of the Act by, since about December 21, 1995, failing and refusing to furnish, and delaying the furnishing of, information requested by the Union which is necessary for and relevant to, the Union's performance of its duties as the exclusive collective bargaining representative of the unit.

6. The unfair labor practices committed by Respondent affect commerce within the

meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having unlawfully failed and refused to furnish and delayed in furnishing necessary and relevant information requested by the Union on December 21, 1995, it is hereby Ordered to furnish the Union such information within thirty days of this order, and to post an appropriate notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[11]

ORDER

The Respondent, Lucent Technologies, Inc., Morristown, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

a. Failing and refusing to furnish, and delaying the furnishing of, information requested by the Union that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of a unit of Respondent's employees.

b. In any like or related manner, interfering with, restraining or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action deemed necessary to effectuate the policies of the Act;

a. Within 30 days of this Order, furnish to the Union the information requested by it in its letter of December 21, 1995.

b. Within 14 days after service by the Region, post at its facilities in the State of New Hampshire copies of the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region One, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon

[11] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[12] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 21, 1995.

c. Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C.

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Wallace H. Nations
Administrative Law Judge